

**THE EASTERN CARIBBEAN SUPREME COURT
GRENADA**

IN THE HIGH COURT OF JUSTICE

GDAHCV2014 /0111

BETWEEN:

**VERONICA RENNIE
ESMOND RENNIE
MICHAEL JOHN**

CLAIMANTS

AND

**PHYLLIS AUDAIN
DEAN AUGUSTINE
JANICE AUGUSTINE**

DEFENDANTS

Appearances:

Mrs. Anyika Cassone of Giboney Chambers for the Claimants

2019: September, 24
2020: March, 3

Judgment

Burnett. M. (Ag.):

- (1) This is an assessment of damages following Judgment in Default of Acknowledgment of Service against the second and third defendants on the 12th March, 2015.
- [2] In that Judgment the Court ordered:
- a) Final Judgment is hereby entered for the claimants against the second and third named defendants .
 - b) The first named claimant is entitled to damages against the second named defendant with respect to damages caused to the first named claimant's pig sty , such award of damages to be assessed .
 - c) The second named claimant is entitled to damages against the second named defendant with respect to damage caused to the second named claimant's house and roof such damages to be assessed .
 - d) The claimants are entitled to damages for trespass against the second and third named defendants, such damages to be assessed.

e) Costs to be assessed.

- [3] On the 12th December, 2018, the Court gave directions for assessment of damages. The defendants were to file witness statements on or before 15th February, 2019, and to file and exchange written submissions on or before 22nd February, 2019.
- [4] On the 11th March, 2019, the defendants were given leave to file Notice in Form 31 by 29th March 2019, and to file witness statements and written submissions by 30th April, 2019.
- [5] The second named defendant was personally served with the Order of 11th March, 2019 on the 25th April, 2019.
- [6] On the 21st May, 2019, at the next hearing date, Counsel George Prime, Attorney on Record for the Defendants was present and the second named defendant was also present. No Submissions or witness statements were filed on behalf of the second and third named defendants.
- [7] The Court now assessed the Damages on the Submission filed by the claimants.

Brief Facts

- [8] The first named claimant is the mother of the second and third named claimants. She gave to both claimants, smaller portions of lands to build their homes.
- [9] In or about 2011, the second named defendant went unto the land and broke down a pig sty; removed the roof of the second named claimant's house and dumped garbage in front of the claimants' house.
- [10] The third named defendant went on to the second named claimant's land, together with a Police Officer, and ordered him to remove his house which he refused.

Special Damages

- [11] The claimants claim special damages for trespass which represented:
 - (a) Daily costs of labours for two (2) workmen working \$80.00-\$100.00 per day.
 - (b) 20 sheets of Galvanize for roof of pig sty.
- [12] Special Damages rest on the fundamental proposition that they must be specifically pleaded and proved¹.

¹Ratcliff v Evans (1892)2 QBS24

- [13] In the witness statement of Veronica Rennie, she stated that she was not in possession of any receipt for the payment of the materials which were initially used to build her pig sty; also, that the pig sty has not been rebuilt.
- [14] The pig sty was twenty (20) feet in length and twelve (12) feet in width, concrete structure with galvanized roof. The roof had about twenty (20) full length galvanize sheets.
- [15] She submitted an invoice from a hardware store Exhibit "VR1" which shows a sheet of galvanize to be \$93.57.
- [16] She deposed that the daily cost of labour for workmen to be \$80.00 to \$100.00 per day. She estimated it would take one (1) day to restore the roof.
- [17] Esmond Rennie, the second named claimant, evidenced in his witness statement that the second named defendant removed four (4) galvanize sheet from his roof and he too submitted an invoice Exhibit "ER1" which shows \$93.57 per sheet of galvanize.
- [18] The second named claimant also stated that as a result of removing the galvanize sheets; one (1) of his mattress got soaked by the rain and had to be thrown away. The mattress measured four (4) feet by six (6) feet. He submitted an invoice of \$1,394.95 as the cost for the mattress.
- [19] The claimants claim \$2,071.40 as special damages.
- [20] In *British Transport Commission v Gourley*², the Court held "the mere enumeration of alleged losses as insufficient prove that the Court would be restrained to deny compensation for items of damage not proven by way of proper documentation, for instance production of receipt or invoices."
- [21] However, as stated by the Privy Council in the Trinidad and Tobago Case of *Carlton Greer v Alston's Engineering Sales and Services Ltd* (2003) when the necessary evidence is not provided but the circumstances warrant it, it is open to the Court to give consideration to an award of nominal damages.
- [22] In *McGregor on Damages*, 17th edition at paragraph 10-004: "nominal damages may be awarded where the fact of loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case, the problem is simply one of proof, one not of absence of loss but of absence of evidence of the amount of loss."
- [23] In the premises, an award of \$2,071.40 as special damages should be made and I so order.

² [1956]AC 185

General Damages

- [24] The claimants considered that an award of \$5,000.00 to be a reasonable sum to be paid as compensation for the breach of their rights to property.

Authorities Submitted

- [25] The claimants submitted the case of *Oliver Adams and Another v Pamela Adams*³ where it is stated that trespass on a person's land gives rise to a continuing trespass for as long as the trespass last.
- [26] *Clarence Ferguson v Stressman Thomas et al*⁴ in that case, judgment was awarded to the claimant on their claim for damages for trespass in the sum of \$5,000.00.

The Law on Damages for Trespass to Land

- [27] In the Australian text *Remedies*, David Wright provided the following commentary which the Court found to be very helpful in this matter: "The tort of trespass to land is actionable per se. This means that damages can be recovered without proof of loss. This is very different from the tort of negligence which requires loss... The purpose of an action in trespass to land is not merely to compensate the plaintiffs for damage to the land. That action also serves the purpose of vindicating the plaintiffs right to the exclusive use and occupation of his or her land."
- [28] The fundamental rule of recovery for damage to land is that the owner of the land is entitled to be restored as far as money can do it, to the position he would have been in had the wrong not been suffered⁶. In effect, the successful claimant in a trespass action is entitled to that sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in; if he had not sustained the wrong for which he is now getting compensation? .

Analysis and Award

- [29] From the evidence, the second named defendant in 2011, went unto the lot of land and broke down a pig sty, removed the roof of the second named claimant's house and dumped garbage in front of his house.
- [30] In 2011, the third named defendant began trespassing unto the said lot of land and indicated to the applicant that the said lot belong to her.

³ Claim No: ANUHCv0666/2006

⁴ GDAHCv2004/0047

⁵ The Federation Press, 2010 Page 48

⁶ *Livingston c Rawyards Coal Co* (1880) 5 Appeal Case 25

⁷ *Ryan v White* (2012) Canlill (NLPC)

- [31] In or about 2012, the third named defendant went unto the land of the second named claimant with a Police Officer and told the second named claimant to remove the house from the said land.
- [32] This continued trespass gives rise to a continuing action for as long as the trespass lasted.
- [33] The claim was filed in 2014 and a judgment was given in 2015.
- [34] A claimant is entitled to recover damages even though he has sustained no loss. There is no need for the claimant to prove actual damage in order to be able to sustain an action for trespass. Trespass to land consists of an unjustifiable intrusion by one person upon land in possession of another.
- [35] In determining the measure of damages to award to the claimant, the Court considers the loss the claimants have suffered. There is evidence that the second named defendant went unto the land, demolished the first named claimant's pig sty, removed the roof from second named claimant's house and dumped garbage in front of his house. An award of \$7,000.00 is granted.

Conclusion

For the foregoing reasons, judgment is entered as follows:

1. Special Damages to the claimants in the sum of \$2,071.40.
2. General Damages to the claimants of \$7,000.00.
3. Prescribed cost to the claimants pursuant to Part 65.5 of the Civil Procedure Rules 2000.

Rickie Burnett
MASTER (Ag.)



By the Court


Registrar
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SUPREME COURT
GRENADA
WEST INDIES